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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,292	02/15/2001	Amy L. Fletcher	KCC-15,171	2228

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EXAMINER

REICHLER, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 12/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,292

Applicant(s)

FLETCHER ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 8-31-01 & 9-24-02 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The use of the trademark LYCRA(R)(page 18), ECOFLEX(R)(page 21), AHCOVEL(R)(page 22), GLUCOPON(R)(page 22), GOHSENOL(R)(page 23) and REXTAC(R)(page 27) has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

The trademarks should either be in all capital letters or with the symbol. See MPEP 608.01(v).

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 9-24-02 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 17, 19-20 and 39 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

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With respect to the drawings and claims 17 and 19-20, note page 14, lines 5-8. With regard to claim 20, note page 31, lines 10-13, i.e. seam not given a numeral or attention directed to certain Figure. It is noted that with regard to claims 2-13, 15-16, 30-33, 35-38 and 40, the specific material or composition claimed is not being required to be shown as the detail of such is not deemed essential for a proper understanding of the invention. The material has been generally denoted by labeled, i.e. numbered, representations, e.g. 34, 31, 29, 82, 84, 90-98.

4. Claim 16 would be in better form if after "wherein", --said at least two pieces of material include-- were inserted. For purposes of examination the pieces of material set forth in claim 16 will be considered one and the same as those in claim 14 not in addition thereto, i.e. three not five pieces at a minimum required.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 1, 9-12, 17, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bolick '508.

See Figures, chassis is 10, side panels are 18, fastening components are 20, mating fastening components are 22, and the dimensions of the side panels are disclosed at col. 5, lines 44-46 and col. 6, lines 1-5, i.e. straps which are 5 inches wide are 50% of a combination which is 10 inches in length, i.e. at least 20% as claimed. With regard to claims 9-12, see col. 1, lines 8-13, col. 2, lines 1-18, and col. 5, lines 15-19. Note definitions on page 7, lines 11-16 of the instant application. Col. 1, lines 10-13 and col. 5, lines 15-17 appear to disclose disposable

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material side flaps, i.e. “may” also infers “may not”, i.e. may not be used for multiple applications.

In any case, it is noted that the side panels are clearly disclosed as comprising “durable material”, see cited portions, and durable material is capable of disposal after one or many uses, i.e. capable of being “disposable”. With regard to claims 17 and 19-20, see col. 1, lines 7-13, and col. 2, lines 57-61.

7. Claims 1-2, 5-11, 14-21, 23, 25, 27, 29, 30, 34, and 36-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Kuen ‘162.

Claim 1: see figures, chassis is 22, col. 3, lines 31-38, side panels are 40, col. 4, lines 16-19, col. 4, lines 16-19, fastening components are 56, col. 5, lines 55-56, mating fastening components are 42, 44, col. 4, lines 16-19, and the dimensions are disclosed at col. 3, line 68- col. 4, line 3 and col. 5, lines 57-61, i.e. straps which are 3 inches wide are about 33% of a shell which is 10 inches long, i.e. at least 205 as claimed. Also note Figures 1, 3 and 4 which show the straps 40 as having a constant width dimension therealong, i.e. the length dimension as claimed is constant.

Claim 2: see col. 4, lines 19-21 and col. 5, lines 55-56.

Claim 5: see page 31, lines 6-7 of the instant specification, i.e.

“Material...renders...suitable...wipes”, in other words a material capable of use as a wipe. As defined by the American Heritage Dictionary, “wipe” is “To subject to light rubbing or friction, as of a cloth or paper, in order to clean or dry”. In other words a cloth or paper is deemed a material or structure capable of use as a wipe. See col. 10, line 50-col. 11, line 52 of Kuen which

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discloses cloth side panels. Thus, since Kuen includes the structure of a cloth, that structure is also deemed inherently capable of the same function or capability as that of the claimed structure, see MPEP 2112.01.

Claim 6: see col. 4, lines 7-10.

Claim 7: see col. 5, lines 38-48.

Claim 8: see col. 5, lines 57-59.

Claim 9: see col. 4, line 7 (note “may” inherently includes “may not”), and col. 5, lines 38-48.

Claims 10-11: see col. 3, lines 23-24.

Claims 14-16: see discussion of claims 7-8 *supra* or col. 10, line 57-col. 11, line 13.

Claims 17-20: see col. 1, lines 11-20 and col. 3, lines 23-30.

Claims 21, 23, 25, 27, 29, 34, 36-38: see discussion of claims 1-2, 5-11, and 14-20 *supra*. Additionally see col. 4, line 55-col. 5, line 31, i.e. “preferably” does not require the preferred structure, i.e. desirably though not necessarily, i.e. the pads 42, 44 do not have to be spaced from the ends. Thus, the seams formed by the hook and loop fasteners can run from the waist opening to the leg openings.

Claim 30: see col. 5, lines 31-33.

Claim 39: see col. 6, line 38-col. 7, line 6, i.e. bonds form tearable, non-refastenable seams.

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8. Claims 13, 31-33 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Yeo and Wallach.

Applicants claim flushability of at least one of or all of the cover, liner and absorbent of the chassis. Kuen teaches a disposable undergarment 20 including a cover, liner and absorbent and the desire for economic efficiency, see col. 3, lines 33-38 and col.9, lines 1-4 and 8-9, but not flushability of the cover, liner and absorbent. However, see col. 1, lines 16-23 and 29-40, col. 5, lines 27-29 and 49-52 and col. 22, Example 17, and col. 23, Examples 22-25 of Yeo and col. 1, lines 13-17 and 39-43, col. 2, lines 4-6 and col. 4, lines 21-25 of Wallach. To employ flushable components for at least one, if not all, of the cover, liner and absorbent of the Kuen disposable device as taught by Yeo and Wallach would be obvious to one of ordinary skill in the art in view of the recognition that such would provide more economic but environment disposability and the desirability of disposability and economic efficiency by Kuen.

9. Claims 3 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Kuen '789.

Applicants claim the components of the fasteners on the side panels of loop material and the components of the fasteners on the front and back panels of the chassis being hook material whereas Kuen '162 teaches the opposite. However see Kuen '789, col. 3, line 65-col. 4, line 4, col. 5, lines 66-68, col. 9, lines 58-61. To reverse the components of Kuen '162 such that the side panel fastener components are loop material while the chassis fastener components are hook

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material instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Kuen '789.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of LaFortuna.

Applicant claims the fastening components of the side panels include two hook and two loop material components and the mating fastening components of the chassis include two loop and two hook material components, respectively, whereas Kuen teaches that the fastening components are all hook material and the mating fastening components are all loop material. However see LaFortuna, col. 8, lines 31-37 and col. 7, line 61-col. 8, line 14, i.e. the surfaces of the components that interlock with each other can be either hook or loop material as long as they lock with each other. To make the hook fastening components and loop mating fastening components of Kuen '162 fastening components including two hook and two loop material components and the mating fastening components including two loop and two hook material components, respectively, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by LaFortuna.

11. Claims 22, 24, 26, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuen '162 in view of Ygge et al.

Applicant claims the fastening material of the chassis being on the inner surface thereof while the mating fastening material of the side panel is on the outer surface thereof which is the opposite of what Kuen teaches. See Figures 1-7 and col. 5, lines 20-27 of Ygge. To make the

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chassis outside fasteners and the inside side panel mating fasteners of Kuen chassis inside fasteners and side panel outside mating fasteners instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Ygge et al.

12. Applicant's remarks on pages 4-5 with regard to the amendments have been noted but the amendments do not overcome the remaining informalities and the remarks do not specifically address the remaining informalities in the specification, claims and drawings. Applicant's remarks on pages 5-8 with respect to the Datta references and the remarks on pages 9 et seq with regard to Keuhn, Jr. and the 103 rejections have been noted but are deemed moot in that such rejections have not been reapplied. Applicant's remarks on pages 8-9 with regard to Kuen '162 have been considered but are deemed nonpersuasive in that Kuen does teach the claimed dimensions, see cited portions of Kuen in the prior art rejections supra, and the specification does not disclose the wipe material to be as set forth on page 9, lines 15-19 of Applicants response.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The newly cited art which was not applied teaches chassis/side panel combinations, and wipe configurations.

14. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday.

K. M. Reichle

December 3, 2002

K. M. Reichle
KARIN REICHLÉ
PATENT EXAMINER